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June 20, 1994

BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

JUN 29 1994

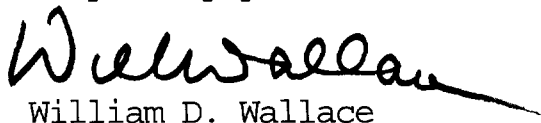
RE: In the Matter of Implementation of
Section 3(n) and 332 of the Communications Act,
Regulatory Treatment of Mobile Services
GN Docket No. 93-252

Dear Mr. Caton:

Transmitted herewith for filing with the Commission on behalf of Loral/QUALCOMM Partnership, L.P., are an original and four copies of its "Comments."

Should there be any questions regarding this matter, please communicate with this office.

Very truly yours,


William D. Wallace

Enclosures

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ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Implementation of Sections 3(n))
and 332 of the Communications Act) GN Docket No. 93-252
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Regulatory Treatment)
of Mobile Services)

JUN 20 1994

COMMENTS OF LORAL/QUALCOMM PARTNERSHIP, L.P.

Loral/QUALCOMM Partnership, L.P. ("LQP"), hereby submits these comments on the spectrum cap proposed in the Commission's Further Notice of Proposed Rulemaking ("FNPRM"), FCC 94-100 (released May 20, 1994). LQP is an applicant to construct GLOBALSTAR, a global, low-earth orbit satellite telecommunications system (File Nos. 19-DSS-P-91(48) and CSS-91-014), which would use the MSS Above 1 GHz frequencies. See Notice of Proposed Rulemaking, 9 FCC Rcd 1094 (1994) ("MSS NPRM").

BACKGROUND

The Commission has proposed to implement a cap on the amount of spectrum that any provider of commercial mobile radio services ("CMRS") may aggregate. FNPRM, ¶¶ 86-105. The Commission devised the spectrum cap to respond to concerns that certain CMRS providers may engage in anticompetitive conduct if they are allowed to secure excessive market power through spectrum aggregation. *Id.* at ¶ 89. The Commission has

tentatively concluded that some amount slightly more than the 40 MHz that will be available to broadband Personal Communications Services ("PCS") licensees might provide the correct measure for its proposed cap. *Id.* at ¶ 93.

The Commission has proposed to include Mobile-Satellite Service ("MSS") spectrum within any CMRS spectrum cap. *Id.* at ¶¶ 97-98. And, the Commission has sought comment on a series of issues related to the inclusion of MSS in the spectrum aggregation limit. As a potential licensee of MSS spectrum, LQP has an interest in how these questions are resolved, and provides the following comments.

DISCUSSION

First, LQP notes that the Commission has not yet resolved the issue of whether MSS Above 1 GHz should be considered CMRS, and it may not resolve the issue before the adoption of rules concerning the CMRS spectrum cap. *See FNPRM*, ¶ 1 (stating adoption deadline of August 10, 1994 for CMRS rules). Commenters in the Commission's MSS Above 1 GHz rulemaking have universally opposed the treatment of MSS Above 1 GHz as CMRS.¹ Thus, LQP submits that until the Commission determines whether MSS Above 1 GHz is or is not CMRS, any consideration of or decision on

¹ *See, e.g.*, Comments of LQP, at 96-101; Comments of AirTouch Communications, at 3-11; Comments of Constellation Communications, Inc., at 60-61; Comments of Ellipsat Corporation, at 45-46; Comments of Motorola Satellite Communications, Inc., at 61-67; and Comments of TRW Inc., at 152-68.

whether to apply a CMRS spectrum cap to such spectrum is premature.

It also makes no sense to take up the application of a spectrum cap to MSS Above 1 GHz while the issue of how much spectrum should be awarded to, and divided among, MSS licensees is a central issue in the MSS NPRM. The Commission does not (and cannot within the deadline for acting on the FNPRM) have the requisite information on which to have any rational decision on a spectrum cap including MSS Above 1 GHz.

With respect to the specific questions asked by the Commission, LQP provides the following comments:

1. Should Any or All Satellite Services Offering CMRS Be Included in a CMRS Spectrum Cap?

Obviously, the Commission should not apply a CMRS spectrum cap to any spectrum held by MSS licensees that is not considered CMRS. However, were the Commission to decide that certain MSS should be deemed CMRS, then it should not include MSS spectrum within the spectrum cap because the policies underlying the cap already have been considered in the award of MSS spectrum.

The Commission is seeking to implement a spectrum cap in order to forestall "the potentially anti-competitive consequences of spectrum aggregation in an evolving and diverse mobile services marketplace." FNPRM, ¶ 89. For several reasons, these concerns are not applicable to satellite services. For example, four of five MSS Above 1 GHz LEO applicants propose to use CDMA, which permits MSS licensees to share spectrum. See NPRM, 9 FCC

Rcd at 1110-11. CDMA technology allows MSS spectrum to be shared among multiple licensees rather than being allocated in segments to single licensees, as in, for example, PCS.

Also, the Commission has proposed a band segmentation plan for MSS Above 1 GHz which allows yet another applicant to use the same MSS spectrum allocation. Id. Band segmentation and interference sharing through CDMA are spectrum sharing strategies which ensure multiple entry and competition, and would make the application of a spectrum cap to MSS Above 1 GHz unnecessary.²

Furthermore, unlike spectrum allocated to the various terrestrial CMRS providers, the availability of MSS spectrum is severely limited. Indeed, while there may be several hundred MHz available for terrestrial mobile services, there is only about 100 MHz available for commercial MSS below 15 GHz, and this amount is further constrained by interservice coordination.

The Commission must also consider the international aspect of MSS, which is generally absent in the terrestrial wireless services. As the Commission recognizes in the FNPRM, international coordination could restrict the amount of spectrum available for MSS, making counting the applicable spectrum difficult. FNPRM, ¶ 98. Moreover, placing a spectrum cap on U.S. MSS licensees could cripple the licensees' global

² The Commission generally has followed an "open skies" policy for satellite services, fostering competition through multiple entry. See Radio-Determination Satellite Service, 58 RR 2d 1416, ¶ 5 (1985); International Satellite Systems, 101 FCC 2d 1046, 1086 (1985); Domestic Communications Satellite Facilities, 35 FCC 2d 844, ¶ 8 (1972), modified, 38 FCC 2d 665 (1972).

competitiveness with foreign MSS systems which are not subject to a cap.

2. Should a Cap Be Applied to the Licensee of the Space Segment and/or to the Earth Station Licensee?

If the Commission decides that MSS spectrum should not be included in a spectrum cap, then it should not allow any cap which may be imposed on separate terrestrial MSS service providers to impose a de facto cap on the space segment licensee. Such a de facto cap could raise the very concerns and practical problems discussed herein.

3. Should a Spectrum Cap Apply Only to MSS Bands and Exclude Fixed-Satellite Bands?

If the Commission decides to apply a spectrum cap to MSS licensees, it should apply the spectrum cap only to user bands and not to feeder link bands which are allocated to the fixed-satellite service.³ For example, the amount of spectrum assigned for MSS Above 1 GHz systems for feeder links alone would exceed the 40 MHz spectrum cap proposed in the FNPRM. It would therefore make little sense to include feeder links in the spectrum cap.

4. Should Spectrum Subject to a Cap Be Counted Before or After the Completion of International Coordination?

If MSS spectrum is counted toward the spectrum cap, the Commission should not adjust MSS spectrum after international

³ LQP takes no position on whether the spectrum cap should apply to U.S.-licensed Fixed-Satellite Service systems.

coordination. Reducing an MSS licensee's spectrum to meet a cap after international coordination could upset the balance between bandwidth and power level achieved during coordination.

International coordination is a complex process, and if the Commission imposes a spectrum cap for MSS after that process has commenced, it would add further complexities.

5. If a Cap Is Imposed, How Should an MSS Service Area Be Defined Given the Inherently Nationwide Scope of Satellite-Delivered Services?

LQP's response to this question points to the infeasibility of counting MSS spectrum toward a spectrum cap. While MSS spectrum would be assigned on a nationwide basis, the number of available channels in any one terrestrial market is affected by the number of channels being used in another market within the same satellite beam. For example, unlike the measure of PCS spectrum in a specific geographic area, the measure of "available" MSS spectrum in one area is a constantly changing fraction of the authorized MSS spectrum based on MSS traffic in other markets.

It would also be impractical for a spectrum aggregation limitation to apply to MSS Above 1 GHz licensees using CDMA because no single MSS licensee would exclusively occupy the amount of spectrum assigned for its use. In short, MSS spectrum is not susceptible to measurement for aggregation purposes comparable to the market-by-market spectrum assignments of terrestrial wireless services.

CONCLUSION

The Commission's proposal to apply a spectrum cap to MSS spectrum is impractical and unnecessary to ensure competition in the provision of MSS services. Even for MSS licensees that provide CMRS, the unique nature of satellite services, including their specific technical requirements and international character, does not lend itself to the constraints of a CMRS spectrum cap. For these reasons, if the Commission decides to adopt a spectrum cap for CMRS, it should find the cap inapplicable to MSS.

Respectfully submitted,

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June 20, 1994

CERTIFICATE OF SERVICE

I, William D. Wallace, hereby certify that I have on this 20th day of June, 1994, caused copies of the foregoing Comments to be delivered via hand delivery (indicated with *) or by U.S. mail, postage-prepaid, to the following:

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